

HEADQUARTERS
UNITED STATES FORCES, JAPAN

APO SAN FRANCISCO 96328

REPLY TO
ATTN OF: J4

16 February 1977



SUBJECT: Agreement to Use and Occupy Buildings and Improvements
Located on Land Leased by the U.S. Government in FBIS
Bolo Point, Okinawa

TO: FBIS, Okinawa Bureau
APO San Francisco 96239

1. The attachment is forwarded for information.

FOR THE COMMANDER

J. W. Abraham
J. W. ABRAHAM, Colonel, USMC
Assistant Chief of Staff, J4

Attachment:
USFJ J73 Ltr of 21 Dec 76, subj.
as above; and USFJ J4 memorandum
of 28 Oct 76.

Cy to: USARJ AJEN-IM
w/attachment

USARJ

MEMORANDUM TO: J73

28 October 1976

SUBJECT: Agreement to Use and Occupy Buildings and Improvements
Located on Land Leased by the U.S. Government in
FBIS Bolo Point, Okinawa.

1. Attachment 1 is a real estate permit and modification entered into on 13 January 1965 and 29 March 1967, respectively, by the U.S. Government and landowners at Bolo Point Trainfire Range, FAC 6021. It permitted local property owners to remain on U.S. Government exclusively controlled land under terms of conditions stated therein.
2. The agreement and modification were recently provided J4 USFJ on request because of interest of both this headquarters and DFAA in a recent problem which is described in attachment 2. The problem itself has been abated, at least temporarily, according to FBIS who prefers for the present to let "sleeping dogs lie".
3. Attachment 3 is the Reversion MEMO for Bolo Point. With regard to paragraph 2g(2)(d) of the MEMO, no subsequent agreement has been entered into according to USARJ who assumed the responsibility for Okinawa real estate and management upon Reversion.
4. As a matter of interest to this headquarters, FBIS, and USARJ in case a similar problem surfaces again, would appreciate your comments/opinion regarding current legality of the permit and its modification since it predates Okinawa Reversion.

ORIGINAL SIGNED BY

J. W. ABRAHAM
Colonel, USMC
Ass't Chief of Staff, J4

Attachments:

1. Agreement and modification
2. FBIS message 230438Z
Sept 76, Subject: Okinawa
Landowners Defy U.S. Military
Instructions
3. MEMO No. 881 of 15 May 1972

Copy to USARJ - AGEN IM
(Mr. Vincent)

HEADQUARTERS

UNITED STATES FORCES, JAPAN

APO SAN FRANCISCO 96328

REPLY TO
ATTN OF

J73

21 DEC 1976

SUBJECT:

Agreement to Use and Occupy Buildings and Improvements
Located on Land Leased by the U.S. Government in FBIS
Bolo Point, Okinawa

TO:

J4

1. We have examined the real estate permit and modification entered into on 13 Jan 1965 and 29 Mar 1967, respectively, by the US Government and landowners at Bolo Point Trainfire Range, Okinawa submitted by you. You request our comments/opinion regarding current legality of the permit and its modification since it predates Okinawa Reversion.

2. The first issue is the validity of the permit and modification. Paragraph 4, Article IV, of the Agreement Between Japan and United States of America Concerning the Ryukyu Islands and the Daito Island states in part:

"Japan recognizes the validity of all acts and omissions done during the period of administration of the Ryukyu Islands and the Daito Islands under and in consequence of directives of the United States or local authorities, or authorized by existing law during that period,"

A declaration of taking was filed and the lease agreement entered into under High Commissioner Ordinance Number 20 which was in effect at the time. Accordingly, it is the opinion of this office that the agreement reflected in the real estate permit and modification is a valid document. Also it would be current if it has not been rescinded or superseded by a subsequent valid contract. This does not mean that all of the provisions of the document would be effective.

3. Article III of the Reversion Agreement grants the United States the use of facilities and areas in the Ryukyu Islands in accordance with The Treaty of Mutual Cooperation and Security, between Japan and the United States. That Article as implemented by the Reversion MEMO for Bolo Point (No. 881, 251st JC-Incl 20, 15 May 1972) constitutes the authority for US Forces to possess and use Bolo Point Trainfire Range. US Forces no longer rely on HICOM Ordinance No. 20, for right to use the land, but rights accorded to individuals by virtue of agreements made while the Ordinance was in effect could still be valid.

4. One question is whether the restrictions pertaining to the occupants are still enforceable. Paragraph 11 of the real estate permit provides that violation of any of the terms and conditions in the agreement may result in the removal of the structure of the offending property owners without compensation whatsoever to them. Paragraph 4 of the real estate permit allows the eviction of the property owners of the buildings and improvements on the land at any time when the Government determines it necessary to make use of the premises and/or for the effective operation of the facility. Thirty days advance notice is required. The remedy is therefore forceable eviction. Any such notice of eviction would as a matter of certainty bring a lawsuit and request for restraining order from the Japanese courts pending the outcome of the case. While it would be impossible to predict with accuracy the legal arguments used in resisting forceable eviction the rights secured under the following Articles of the Japanese Constitution would certainly be raised:

Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 25. All people shall have the right to maintain the minimum standards of wholesome and cultured living. In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

5. While the agreements in question were prepared under the authority of the U.S. Administration the interpretation, application, and remedies will be under Japanese law. The minimum standards of wholesome and cultured living would in all likelihood be measured by the standards of present day Japan. The restricted electrical use authorized by the 29 March 1967 modification among many things would prohibit use of laundry machines, fluorescent lights and certain types of motors. The original agreement dated 13 Jan 1965 did not even allow electricity. While it is felt that a total ban of electricity for the occupants would not meet the minimum standards today, there is no way of predicting court reaction to the more relaxed restrictions in the modification. The right to have a washing machine or other "offending" household appliance may well be considered to be a minimum standard today for wholesome or cultured living.

6. An important factor to be considered is whether GOJ upon reversion succeeded to all rights of the U.S. under the real estate permit and modification. Article 1 of the Reversion Agreement provides in part:

"..... the United States of America relinquishes in favor of Japan all rights and interests under Article 3 of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951, effective as of the date of entry into force of this Agreement. Japan, as of such date, assumes full responsibility and authority for the exercise of all and any powers of administration, legislation, and jurisdiction over the territory and inhabitants of the said islands."
(underlining supplied)

The applicable part of Article 3 of the Treaty of Peace with Japan pertaining to Okinawa provides:

"..... The United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters."
(underlining supplied)

The implementation of HICOM Ordinance No. 20 was as exercise of a power of administration. The taking of the leasehold estate, the Agreement for Use and Occupancy, and the modification are all part of that process. That being so any remedy would be enforceable only by GOJ as the successor to the U.S. administrative power.

7. Missing elements in this case are copies of subsequent lease agreements with GOJ for these specific land plots. It is not known whether these restrictions were specifically deleted mentioned, referred to or incorporated in the new agreements. Also, Attachment 2 of your correspondence contains references to contracts for lease being entered into after reversion. Before rendering a more definitive opinion, this office would have to review all subsequent lease agreements on these specific land plots.

8. In summary it is the conclusion of this office that:

(1) In the absence of a recision or a valid contract superseding the stated Agreement to Use and Occupy Buildings and modification it stands as a valid agreement.

(2) The interpretation, application and remedies available will be subject to the restrictions of the Japanese law and Constitution.

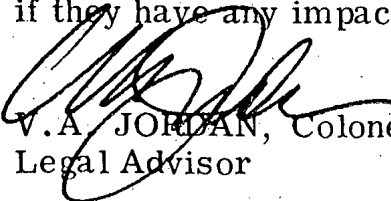
(3) The remedy of forceable eviction for violation of the agreement if attempted would in all likelihood end up in Japanese court with claims of violation of Constitutional rights and other legal arguments.

(4) GOJ succeeded the US in its powers of administration upon reversion of Okinawa. GOJ would be the party to enforce any remedies under subject Agreement and Modification.

(5) If GOJ has negotiated lease contracts on these specific plots of land since Okinawa's reversion subject agreement may have been superseded (or rescinded).

(6) While not mentioned previously, any attempted eviction will cause considerable adverse publicity as the court action could last several years.

9. If you secure copies of later lease agreements between the land-owners and GOJ, this office would be happy to review them to ascertain if they have any impact of the conclusions conveyed by this letter.



V.A. JORDAN, Colonel, USAF
Legal Advisor